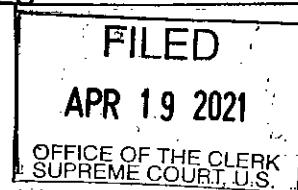


No 21-5454

IN THE
SUPREME COURT OF THE UNITED STATES



IN RE QUINN

(Your Name)

— PETITIONER

vs.

ORIGINAL

GREG MORGENTHALER — RESPONDENT(S)

ON PETITION FOR A WRIT OF PROHIBITION, MANDAMUS EXTRAORDINARY

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF PROHIBITION/MANDAMUS EXTRAORDINARY

SAMUEL LEE QUINN

(Your Name)

251 N. IL. HIGHWAY 37

(Address)

INA, ILLINOIS 62846

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

1. DO THE COURT OF APPEALS ABUSE ITS DISCRETION BY REFUSING TO RECALL ITS MANDATE FOR MISCARRIAGE OF JUSTICE. NOT ACKNOWLEDGING THE GUIDED GENERAL PRINCIPLES UNDERLYING THE SUPREME COURT'S HABEAS CORPUS JURISPRUDENCE FOR ACTUAL INNOCENCE.
2. DO THE COURT OF APPEALS HAVE AN OBLIGATION TO ADDRESS A HABEAS PETITION WHERE THE DISTRICT COURT HAS ABUSED ITS DISCRETION.
3. IS THE CONVICTION OF AN INNOCENT PERSON, THE REFUSAL TO ADDRESS THE MERITS OF ONE PETITION BUT OTHER (AS THE STATUTES AND LAWS REQUIRE), DUE PROCESS AND EQUAL PROTECTION FIFTH, SEVENTH AND FOURTEEN SUBSTANTIAL CONSTITUTIONAL VIOLATIONS.
4. IS THE UNITED STATES SUPREME COURT'S PRECEDENT HOLDING FOR ACTUAL INNOCENCE OVERCOMING AEDPA'S ONE-YEAR STATUTE OF LIMITATIONS IN *MCQUIGGIN V. PERKINS*, 133 S.Ct. 1924 (2013) BINDING ON THE LOWER COURTS.
5. DO THE DISTRICT COURTS HAVE TO ADDRESS THE MERITS IN AN ACTUAL INNOCENCE HABEAS PETITION TO DETERMINE IF THE NEW EVIDENCE SHOWS PETITIONER IS ACTUALLY INNOCENT AND NO REASONABLE JUROR WOULD HAVE CONVICTED.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

ARNOLD V. DITTMANN NO. 163392 U.S. COURT OF APPEALS, SEVENTH CIRCUIT
JUDGMENT ENTERED AUG. 24, 2018

JONES V. CALLOWAY NO. 15-1174 U.S. COURT OF APPEALS, SEVENTH CIRCUIT
JUDGMENT ENTERED NOV. 15, 2016

MCQUIGGAN V. PERKINS, NO. 12-126 SUPREME COURT OF THE UNITED STATES
JUDGMENT ENTERED MAY 28, 2013

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TABLE OF AUTHORITIES CITED

CASES

MCQUIGGAN V. PERKINS, 133 S.Ct 1924-36 (2013)
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STATUTES AND RULES

28 U.S.C. § 2244 (d)(1)
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28 U.S.C. § 2254 (E)(2)(A)(ii), (B).

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OTHER

FOURTH, FIFTH, SEVENTH AND FOURTEEN AMENDMENTS
CONSTITUTIONAL VIOLATIONS.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF EXTRAORDINARY

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JANUARY 28, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

DUE PROCESS, EQUAL PROTECTION FIFTH, SEVENTH
And Fourteenth AMENDMENTS

FUNDAMENTAL MISCARRIAGE OF JUSTICE

28 U.S.C. § 2244 (d)(1)

28 U.S.C. § 2253 (c)(2)

28 U.S.C. § 2254 (E)(2)(A)(ii), (B)

STATEMENT OF THE CASE

THE COURT OF APPEALS ABUSED ITS DISCRETION BY REFUSING TO RECALL ITS MANDATE AS REQUIRED BY LAWS AND CONSTITUTION TO REVIEW THE MERITS OF PETITIONER'S ACTUAL INNOCENT AND ABUSES THAT DISCRETION UNLESS IT ACTS TO AVOID A MISGAR-
AGE OF JUSTICE AS DEFINED BY THE SUPREME COURTS HABEAS JURISPRUDENCE. CALDERON V. THOMPSON, 523 U.S. 538, 558, 118 S. CT. 1489, 140 L. ED. 2d 728 (1998). THE COURT OF APPEALS HAS AN IN-
HERENT POWER TO RECALL ITS MANDATES SUBJECT TO REVIEW FOR AN ABUSE OF DISCRETION WHERE THE DISTRICT COURT COMPLETELY ERRONEOUSLY DISMISSES A PETITION CONTRARY TO SUPREME COURT'S HABEAS JURISPRUDENCE. PETITIONER ESTABLISH ACTUAL INNOCENCE BY CLEAR AND CONVINCING NEW EVIDENCE AND SHOULD HAVE BEEN GRANTED AN EVIDENTIARY HEARING EVEN UNDER 2254 (E)(2)(A)(ii), (B) TO AEDPA TIME LIMIT, CLEARLY IN ALL FOUR OF PETITIONER'S PETITIONS (APPENDIX F, G, H, J)
THE COURT OF APPEALS HAD AN OBLIGATION UNDER THE CONSTITU-
TION, LAWS AND TREATIES TO REVIEW PETITIONER'S PETITIONS FOR

A MISCARRIAGE OF JUSTICE WHERE FACTS UNDERLYING THE CLAIMS WOULD BE SUFFICIENT TO ESTABLISH CLEAR AND CONVINCING NEW EVIDENCE THAT BUT FOR CONSTITUTIONAL ERROR, NO REASONABLE FACT FINDER WOULD HAVE FOUND PETITIONER GUILTY OF THE UNDERLYING OFFENSE, AWARE OF THE FACTS FOR THE DISTRICT COURT'S REFUSAL TO ADDRESS THE MERITS IN PETITIONER'S ACTUAL INNOCENCE PETITION BECAUSE OF AEDPA'S ONE-YEAR TIME LIMITATIONS, WHICH IS CONTRARY TO MANY AEDPA'S ONE-YEAR TIME LIMIT FOR ACTUAL INNOCENCE DECISION RECENTLY BY THE SEVENTH CIRCUIT THAT SHOWS, THE EQUITABLE EXCEPTION FOR ACTUAL INNOCENCE COULD OVERCOME THE ONE-YEAR TIME LIMITATIONS OF AEDPA. REGARDLESS OF THIS KNOWLEDGE, AS THE DISTRICT SO DID THE SEVENTH CIRCUIT COURT OF APPEALS, ABUSED ITS DISCRETION BY DENYING PETITIONER'S DUE PROCESS, EQUAL PROTECTION AND CONSTITUTIONAL FUNDAMENTAL MISCARRIAGE OF JUSTICE BY REFUSING TO ADDRESS THE MERITS IN PETITIONER'S PETITION OR REMANDING IT BACK TO THE DISTRICT COURT FOR THE SAME.

THE DISTRICT COURT ABUSED ITS DISCRETION BY DISMISSING PETITIONER'S HABEAS PETITION COMPLETELY ERRONEOUSLY STATING, "BECAUSE HIS HABEAS PETITION IS UNTIMELY UNDER 28 U.S.C. § 2244, THE COURT DOES NOT REACH THE MERITS OF HIS CLAIMS, 2244(d)(1), THE COURT DOES NOT REACH THE MERITS OF HIS CLAIMS, but instead DISMISSES this ACTION IN ITS ENTIRETY AND declines to CERTIFY ANY ISSUES FOR APPEAL UNDER 28 U.S.C. § 2253 (c)(2)." ALSO, "QUINN ARGUES THAT HIS ACTUAL INNOCENCE EXCUSES THE LATE FILING OF HIS HABEAS PETITION, SEE McQUIGGIN V. PERKINS, 569 U.S. AT 392-93. (APP. B, PGS. 1, 4); THERE IS NO DISPUTE THAT PETITIONER FILED HIS HABEAS PETITION BEYOND SECTION 2244(d)(1)'S ONE-YEAR TIME LIMIT, SO PETITIONER'S PETITION IS BARRED AS UNTIMELY UNLESS PETITIONER CAN ESTABLISH THAT PETITIONER QUALIFIES FOR AN EXCEPTION TO THE LIMIT. PETITIONER IS RELYING ON PETITIONER'S ACTUAL INNOCENCE TO OVERCOME THE TIME BARRIER, ACTUAL INNOCENCE IS AN EQUITABLE EXCEPTION THAT RENDERS THE TIME LIMIT SET FORTH IN SECTION 2244(d)(1) INAPPLICABLE, McQUIGGIN V. PERKINS, SUPRA, 569 U.S. AT 386, 133 S. CT. AT 1925; SEE ALSO GLADNEY V. POLLARD, 749 F.3d 889, 895 (7TH CIR. 2015).

Actual Innocence habeas cases must be guided by the general principles underlying the Supreme Court's habeas jurisprudence. As such, AEDPA's one-year statute of limitations is not a remedy in order to avoid a fundamental miscarriage of justice and constitutional violations that resulted in the conviction of one who is actually innocent. The court must address the merits of petitioner's claims to determine if petitioner has shown it is more likely than not that no reasonable juror would have convicted petitioner in the light of the new evidence. See Schlup, 513 U.S. at 327, 115 S.Ct. 851.

REASONS FOR GRANTING THE PETITION

BECAUSE PETITIONER IS BEING HELD IN INCARCERATION IN VIOLATION OF CONSTITUTION, LAWS AND TREATIES AS AN INNOCENT PERSON, PETITIONER HAS PRESENTED BY CLEAR AND CONVINCING NEW EVIDENCE THAT PETITIONER IS ACTUALLY INNOCENT AND NO REASONABLE JUROR WOULD HAVE CONVICTED PETITIONER NOT FOR THE CONSTITUTION ERROR, PETITIONER HAS BEEN DENIED DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS AND CONSTITUTION FOR A FUNDAMENTAL MISCARRIAGE OF JUSTICE, VIOLATING PETITIONER'S DUE PROCESS AS REQUIRED BY LAW. PETITIONER SIMPLY ASKS FOR NO MORE BUT SHOULD RECEIVE NO LESS THAN THIS HONORABLE COURT PROVIDES FOR ALL PETITIONERS ACCORDING TO ITS PRECEDENT, HOLDINGS FOR ACTUAL INNOCENCE HABEAS PETITIONERS IN *McQUIGGAN V. PERKINS*, 133 S. Ct. 1924 (2013).

PETITIONER SINCERELY PRAY THIS HONORABLE COURT TO
GRANT RELIEF BY REMANDING PETITIONER'S PETITION BACK TO
THE COURT OF APPEALS WITH INSTRUCTION TO RECALL IT'S MANDATE
ACCORDING TO SUPREME COURT' JURISPRUDENCE, ORDERING THE
PETITION BACK TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY
HEARING ON THE MERITS ACCORDING TO THE SUPREME COURT' HOLD-
INGS FOR ACTUAL INNOCENCE TO AEDPA' TIME LIMITATIONS IN
MC QUIGGIN V. PERKIN, 133 S.Ct. 1924-34 (2013) WITH THE APPOINTMENT OF
COUNSEL.

CONCLUSION

The petition for a writ of EXTRADITION should be granted.

Respectfully submitted,

Samuel Ottinn

Date: Aug. 13 2021